United Nations A/C.6/55/SR.11

General Assembly
Fifty-fifth session

Official Records

Distr.: General
10 January 2001
English
Original: Spanish

Sixth Committee

Summary record of the 11th meeting
Held at Headquarters, New York, on Thursday, 19 October 2000, at 10 a.m.

Chairman:	Mr. Politi	(Italy)
later:	Mr. Vázquez (Vice-Chairman)	(Ecuador)
later:	Mr. Politi (Chairman)	(Italy)

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00-69842 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 162: Establishment of the International Criminal Court (*continued*) (PCNICC/2000/INF/3 and Add.1 and 2, PCNICC/2000/L.1 and Add.1 and 2 and PCNICC/2000/L.3/Rev.1)

1. **Mr. Alabrune** (France) said that the countries on whose behalf he had spoken at a previous meeting (A/C.6/55/SR.9) also included Lithuania and Poland.

2. **Mr. Suh** Dae-won (Republic of Korea) expressed support for the process of establishing the International Criminal Court and commended the work of the Preparatory Commission. He noted the adoption of the Elements of Crimes and the Rules of Procedure and Evidence, which had resulted from a compromise reached among all delegations without infringing upon the integrity of the Statute, bearing in mind the principles of the Court, namely, fairness, independence and effectiveness. With the adoption of those two draft texts, the second stage of the process had been completed; there remained to be considered the draft financial regulations and rules, the draft relationship agreement between the United Nations and the Court, the draft agreement on the privileges and immunities of the Court, the definition of the crime of aggression and the conditions for the exercise of jurisdiction by the Court over that crime.

3. His Government had signed the Rome Statute in March 1999 and had begun the process of ratification, which would occur once the laws of the Republic of Korea on extradition and international mutual assistance in criminal matters had been revised and other matters had been finalized. It was to be hoped that States would exchange information regarding the steps necessary for initiating the activities of the International Criminal Court, including the revision of domestic legislation; in that regard, his delegation noted the adoption by the Government of Canada of legislation relating to crimes against humanity and war crimes.

4. The Statute of the International Criminal Court was a landmark on the road to establishing the rule of law and putting an end to impunity for perpetrators of heinous crimes. His Government expressed its willingness to cooperate with other States with a view to ensuring the early establishment of the Court and its independent and effective functioning and, to that end, would contribute actively to the work of the Preparatory Commission.

5. **Mr. Filippi Balestra** (San Marino) said that his Government had been the first in Europe to ratify the Statute of the International Criminal Court; it subscribed fully to the statements made or the subject by the Secretary-General in his report on the work of the Organization (A/55/1). To date, 114 States had signed the Statute and 21 had ratified it; that figure was still far short of the 60 ratifications needed to bring the Statute into force. Accordingly, his Government urged those States which had not yet signed and ratified the Statute to do so as soon as possible.

6. His delegation commended the work accomplished by the Preparatory Commission with regard to the draft texts of the Rules of Procedure and Evidence and the Elements of Crimes, and reaffirmed its desire to cooperate with those delegations participating in the next session of the Preparatory Commission.

7. **Mr. Kuindwa** (Kenya) expressed his delegation's continued support for the process of establishing the International Criminal Court, in which it had participated actively; his Government had signed the Statute and was taking steps to ratify it. He commended the work of the Preparatory Commission, which had led to the adoption of the Rules of Procedure and Evidence and the Elements of Crimes within the established time-frame, as those two documents were an integral part of the functioning of the Court. Since both the Statute and the two supplementary documents were the result of a delicate compromise, all Member States must work for their preservation and implementation.

8. His delegation applauded those countries which had signed and ratified the Statute of the Court, and thanked the Secretary-General, who had mentioned the Statute during the Millennium Summit as one of the conventions that should be signed and ratified by States on a priority basis. His delegation also expressed appreciation to international non-governmental organizations and other entities, such as the Parliamentarians for Global Action, for their contribution to making countries aware of the need to sign and ratify the Statute. Also deserving of gratitude were the delegations that had contributed to the trust fund established pursuant to paragraph 8 of General Assembly resolution 53/105, which had enabled 73

delegates from least developed countries to attend the sessions of the Preparatory Commission.

9. His delegation had studied the draft financial regulations and rules of the Court and deemed them to be a good basis for discussion. The General Assembly must give the Preparatory Commission sufficient time in 2001; in that context, his delegation supported the proposal by the Chairman of the Commission that two sessions of two weeks each should be held to discuss the remaining items.

10. **Ms. Álvarez Nuñez** (Cuba) noted the importance of the work accomplished by the Preparatory Commission, particularly the negotiation of the basic documents, the Rules of Procedure and Evidence and the Elements of Crimes. Confidence must be placed in the impartiality of the judges of the Court in applying those instruments.

11. Her Government believed that the Preparatory Commission should focus on the negotiations involving the definition of the crime of aggression and the conditions for the exercise of the Court's jurisdiction, based on the consolidated text of December 1999 and the valuable proposals submitted thereafter; in that context, the informal schedule proposed by the Bureau for the Working Group was still unsatisfactory. What was involved was a politically delicate matter, but one of priority, since the future credibility of the Court depended on it.

12. Her Government had a moral commitment to preserving the integrity of the Rome Statute; it therefore rejected all attempts to modify or limit the Court's jurisdiction or to undermine the integrity of the Statute. The effectiveness of the Court must not be subordinated to the compromise proposals put forward by certain countries which had promised to cooperate with the Court to the extent that their national security interests permitted, and which persisted in an effort to dominate and manipulate the Court, thus holding it hostage to their strategic and world-hegemonic interests. For its part, her Government would continue to contribute to the negotiating process in the conviction that the legitimate interests of the international community would prevail.

13. **Mr. Tarabrin** (Russian Federation) said that his country had signed the Rome Statute in September 2000, as a logical consequence of its support for a stable international system of law and order based on justice and the rule of law. In view of the number of States which had signed and ratified the Statute, the process of establishing the International Criminal Court was already irreversible. The Statute was the result of a balanced compromise, and it contained the fundamental elements necessary for the future Court to contribute towards implementing the goals and principles of the Charter of the United Nations.

14. He drew attention to the importance of the work done by the Preparatory Commission, and especially the adoption by consensus of the Elements of Crimes and the Rules of Procedure and Evidence. Together with the Rome Statute, they represented the cornerstones of the system and would determine the character of the future Court and the parameters by which its mechanisms would operate.

15. The Russian Federation attached paramount importance to defining the crime of aggression, the substantive aspect of which was that it was committed by a State. Consequently, the international criminal responsibility of individuals derived from the responsibility of the State, and there could not be a situation in which individual criminal responsibility on the part of the organizers of aggression would be recognized without recognizing at the same time the responsibility of the State. According to the Charter of the United Nations, such a qualification of the acts of a State could only be made by the Security Council; consequently, a decision of the Council that action by a State constituted aggression was the basic element of the crime of aggression for the purposes of the Statute. Accordingly, in the case of a presumed perpetration of a crime of aggression by an individual, the Court could only become involved after the Security Council had determined the existence of an act of aggression on the part of a State.

16. In that situation it had to be asked whether, in the absence of such a determination of an act of aggression on the part of a State, the International Criminal Court could present a proposal to the Security Council that it should make one. The Charter clearly stated the entities which could appeal to the Security Council in the context of the maintenance of international peace and security, namely, the General Assembly (Articles 10 and 11), the States Members of the United Nations or non- member States which were parties to the dispute (Article 35), and the Secretary-General of the United Nations (Article 99). That was an exhaustive list, which could not be expanded under the Statute of the Court or any other agreement. It was important to

remember that Article 103 of the Charter asserted the priority of Charter obligations over those contracted under any other agreement. It was essential to respect that prerogative of the Security Council, since otherwise there would be a conflict of interest between the Court and the Council. That being so, his country took the view that the Court could not be given a right to address requests to the Security Council; according to Articles 39 and 24 of the Charter, responsibility for the maintenance of peace lay with the Council.

17. In the framework of the debates in the Preparatory Commission, various proposals had been presented to the effect that the International Court of Justice (ICJ) should be the triggering mechanism for prosecuting crimes of aggression. However, on the basis of the Charter and the Statute of ICJ, there were no legal possibilities for the latter, through the Statute of the International Criminal Court, to obtain the right to decide whether a State's actions constituted an act of aggression. Concerning the definition of the crime of aggression, the Russian Federation had proposed a general definition based on the Charter of the Nürnberg Tribunal, but did not object to a more detailed definition inspired by General Assembly resolution 3314 (XXIX) of 14 December 1974.

18. Lastly, his delegation emphasized the importance of the future Relationship Agreement between the United Nations and the Court, the Headquarters Agreement and the Financial Regulations, and considered that the documents to be adopted should be based strictly on the Rome Statute and should contribute to the universal participation of States in the International Criminal Court.

19. **Ms. Ramoutar** (Trinidad and Tobago), speaking on behalf of the States of the Caribbean Community (CARICOM) which were Members of the United Nations, said that they were all in agreement with the establishment of the International Criminal Court and therefore urged States which had not yet done so to become parties to the Statute. Among the activities to promote ratification of the Statute was the organization by the International Committee of the Red Cross of a regional seminar on the Court in Port of Spain, Trinidad and Tobago, in May 2000. A bill on the International Criminal Court had been laid before Parliament in Trinidad and Tobago. In that connection, CARICOM supported the proposal of the South African Development Community that a trust fund should be established to assist States in adopting implementing legislation. The fact that the Preparatory Commission had adopted by consensus the Rules of Procedure and Evidence and the Elements of Crimes testified to the determination of the international community to overcome its differences and work towards the Court becoming a reality as soon as possible, once the remainder of the international instruments needed for that purpose had been adopted. At all events, the international community had a duty to ensure that the integrity of the Statute was not undermined either directly or indirectly.

20. Although it was important that progress had been achieved in defining the crime of aggression, CARICOM considered that other aspects of the work of the Preparatory Commission required more immediate attention, and should be resolved through consensus and the participation of as many delegations as possible. In that context, she was grateful for the contributions by some States to the Trust Fund to facilitate the participation of the least developed countries in the meetings of the Preparatory Commission. However, no contributions to the Trust Fund had been received for other developing countries.

21. **Mr. Effah Apenteng** (Ghana) said that his country, which had ratified the Statute of the Court, called on States which had not done so to sign and ratify it as soon as possible, so that the Court could begin to operate, and so that the special international tribunals would no longer be necessary. The reservations expressed by States reluctant to ratify the Statute were understandable. Ghana itself was concerned about the compromise solutions adopted on some issues, although it understood that they were the only way to create an effective and independent Court enjoying the support of the largest possible number of States. Those solutions had made it possible to adopt the draft Rules of Procedure and Evidence and the Elements of Crimes, and he hoped the same could be done for the Agreement on the Privileges and Immunities of the Court and its Financial Regulations. The latter were very important, since the Court must have the financial resources to guarantee its independence.

22. In defining the crime of aggression, it was necessary to bear in mind General Assembly resolution 3314 (XXIX) of 14 December 1974, and the consolidated text of the proposals made on the subject. On the other hand, because the Security Council could determine the existence of an act of aggression, the

relationship between the Council and the Court must be made clear in order to avoid endangering the Court's independence and competence.

23. *Mr Vázquez (Ecuador) (Vice-Chairman) took the Chair.*

24. **Mr. Palacios** (Mexico) said that some of the provisions of the Statute of the Court were at variance with the Constitution of Mexico, such as those concerning the principle of *non bis in idem*, the surrender of individuals to the Court and the procedural guarantees. For that reason, after signing the Statute in December 2000 Mexico would begin making the necessary adjustments to its Constitution and its secondary legislation, with a view to incorporating the system of international justice contemplated in the Statute and thereby combating the most heinous international crimes.

25. **Mr. Al-Soaibi** (Saudi Arabia) said that it was necessary to have an exact definition of the crime of aggression, which together with the Rules of Procedure and Evidence and the Elements of Crimes would enable the Court to do its work properly. On the other hand, it must be decided what the Court's role would be if the Security Council was unable to determine the existence of an act of aggression. That should mean that as a result of intervention by the Court such acts would not go unpunished whenever a member of the Security Council exercised its right of veto.

26. **Mr. Buena Soares** (Brazil) associated his delegation with the statement made by Colombia on behalf of the Rio Group.

27. During the June session of the Preparatory Commission, work had been successfully completed on preparing the Elements of Crimes and the Rules of Procedure and Evidence. The resulting documents satisfied the legitimate aim of deterring and punishing mass violations of human rights, while protecting individual rights with the necessary caution and thoroughness.

28. It was a matter for congratulation that a large number of countries had signed or ratified the Rome Statute. The Government of Brazil, whose President had recently called upon the international community to speed up the establishment of the Court, had signed the Statute in February 2000 and had submitted to Parliament draft legislation for its ratification. However, before the draft was adopted it would be necessary to overcome significant constitutional and procedural hurdles in the coming months.

29. At its next session, the Preparatory Commission would discuss a series of agreements supplementary to the Statute; the most challenging would be the Relationship Agreement between the Court and the United Nations, which must reflect a balance of independence and cooperation between the two institutions. In considering those instruments, it was important to bear in mind the fundamental point that flexibility and a spirit of compromise were called for, not just to make the Court possible, but to make it a force for peace that would underscore the fundamental principle that no one was above the law. The greater the number of countries that agreed to submit to the Court's jurisdiction, the greater its effectiveness would be. In that regard, he noted with satisfaction the many delegations which had stressed the importance of full respect for the letter and spirit of the Statute.

30. Lastly, he had been favourably impressed by the constructive atmosphere that had prevailed during the debate on the crime of aggression and, in particular, by the exchange of views on the relationship between the Court and the Security Council.

31. **Mr. Naidu** (Fiji) said that he associated himself with the statement to be made by the representative of New Zealand at the following day's meeting on behalf of the South Pacific Forum.

32. Fiji was proud to be the first State from the Pacific region, and the fifth United Nations Member State, to ratify the Statute. He welcomed the fact that there had been 21 ratifications to date and was confident that Member States would renew their commitment to that instrument and, ultimately, to the establishment of the International Criminal Court. In conclusion, he drew attention to the forthcoming session of the Preparatory Commission and to the December 2000 deadline for completion of the work.

33. **Mr. Ouch Borith** (Cambodia) said that his Government had observed with keen interest the significant progress in the work of the Preparatory Commission and the fact that 21 Member States had ratified the Rome Statute and 114 had signed it. The Statute paved the way for the creation of a world criminal court, which was essential to eradication of the current culture of impunity.

34. At its fifth session, the Preparatory Commission had adopted a substantial part of two important draft documents: the Rules of Procedure and Evidence and the Elements of Crimes. The Working Groups should reach consensus in order to complete those two instruments. At its next session, the Commission should focus within a limited time frame on outstanding issues such as the Relationship Agreement between the Court and the United Nations, the Financial Regulations and Rules of the Court, the Agreement on Privileges and Immunities of the Court and, most importantly, the definition of the crime of aggression. His delegation considered that work on the last of those topics should be based on General Assembly resolution 3314 (XXIX) of 14 December 1974 and should be carried out in a spirit of compromise and transparency, taking into account the integrity of the Statute. It was essential that the Court should function in a fair, credible and responsible way and not play a political role.

35. His Government had made great efforts to strengthen democratic pluralism and the rule of law. With the support of the world community, it had concluded with the United Nations an agreement for the establishment of extraordinary chambers for prosecution of the senior leaders of the Khmer Rouge allegedly responsible for the most serious crimes committed from 1975 to 1979. The relevant draft legislation, which had been submitted to Parliament, would provide a special case for that tribunal to try those responsible under Cambodian law. Lastly, he announced that his Government would sign the Rome Statute during the current week and would take steps to proceed with the ratification process.

36. **Mr. Ileka** (Democratic Republic of the Congo) said that he associated himself with the statement made the previous day by the representative of Lesotho on behalf of the Southern African Development Community (SADC) and reiterated his agreement with the proposal for the establishment of a trust fund. He congratulated the Canadian Government on its efforts to promote the signing and ratification of the Rome Statute and on its public awareness campaigns.

37. The Court should not be subject to political pressure; rather, it must be a respectable, credible institution that would prevent certain States from committing regrettable acts such as allowing their judicial officers to recklessly prosecute the political leaders of other sovereign, independent States with whose policies they disagreed; it should also put a final end to State terrorism of the type currently engaged in by Rwandans, Ugandans and Burundians against his country. In that regard, it was unfortunate that since the Statute of the Court established the principle of non-retroactivity for crimes committed prior to its entry into force, the human rights violations which the aforementioned aggressors had committed against his country would remain unpunished. It was therefore necessary to speed up the Preparatory Commission's work in order to establish a genuinely independent International Criminal Court that would put an end to such barbarous acts.

38. While the conclusion of work on the draft Rules of Procedure and Evidence and the Elements of Crimes was encouraging, certain issues, such as the definition of the crime of aggression and the means of reconciling the Court's independence with the prerogatives of the Security Council, remained problematic. With respect to the latter issue, he considered that making the Court subject to a prior decision of the Security Council would compromise its independence, a fact that justified the reservations expressed by numerous delegations which, like his own, considered it premature to ratify the Statute under those conditions and proposed that the Court should act on its own initiative to establish the existence of a crime of aggression in cases where the Security Council had refrained from doing so. His Government had signed the Statute on 8 September 2000 in response to the Secretary-General's appeal in his letter of 15 May 2000, but its ratification would depend on the manner in which the problem of the definition of the crime of aggression was solved. He hoped that all the remaining difficulties would be resolved during the next session of the Preparatory Committee; in that case, his Government would submit a bill for ratification of the Statute.

39. **Mr. Mangueira** (Angola) expressed his delegation's full support for the statement made by the representative of Lesotho on behalf of SADC. Angola had signed the Rome Statute in 1998 and its Parliament had approved it on 1 August 2000; only ratification by the Head of State was lacking. His delegation considered that the Statute should enter into force as soon as possible and urged countries that had not yet signed or ratified it to do so. The International Criminal Court should be strong and independent so

that it could punish all international criminal acts without discrimination against their perpetrators.

40. *Mr. Politi (Italy) resumed the Chair.*

41. **Mr. Zellweger** (Observer for Switzerland) said that significant progress had been made since the Rome Conference and that the establishment of the Court was virtually a fait accompli. In that regard, he noted that the Elements of Crimes and the Rules of Procedure and Evidence had been adopted by consensus. The former instrument had required direct incorporation of the principle of individual responsibility into existing norms of international humanitarian law; the Rules of Procedure and Evidence had rightly combined various traditional and procedural traditions.

42. Over a third of the ratifications necessary for the entry into force of the Statute had already been obtained, and the 114 signatory countries were representative of all regions of the world, proving the Court's universality. The progress achieved was the result of a common effort; however, the contributions of many non-governmental organizations deserved special mention.

43. His Government hoped that the General Assembly would give the Preparatory Commission more time so that it could fulfil its mandate, particularly that of considering modalities for financing the Court. To that end, the Preparatory Commission would meet for five weeks, divided into two sessions, in 2001. However, the Commission had neither the time nor the power to renew negotiations on the provisions of the Rome Statute; therefore, the latter's integrity must be preserved at all costs. His Government was taking steps to achieve rapid ratification of the Statute and hoped that Switzerland would be among the first 60 States to do so. It would soon submit to Parliament a recommendation for ratification and the relevant set of draft laws; the issue would then be subject to the possibility of a public referendum. The process should be completed by the end of the following year.

44. **Mr. Levrat** (International Committee of the Red Cross (ICRC)) said that ICRC had consistently supported the establishment of a fair, effective International Criminal Court. The 1949 Geneva Conventions had entrusted ICRC with the role of protecting and assisting victims of armed conflict. That function could be carried out only if ICRC maintained strict neutrality in its work. Specifically, its delegates' access to the victims of armed conflict depended on the confidence of warring parties that it would not provide evidence against them in subsequent criminal proceedings. For that reason, the International Criminal Tribunal for the former Yugoslavia had recently recognized that ICRC was exempt from providing testimony under customary international law; ICRC thanked the Preparatory Commission for ensuring that that exemption was embodied in the Rules of Procedure and Evidence.

45. The efforts that States which had signed or ratified the Rome Statute had made in order to incorporate into their domestic law the crimes falling within the Court's jurisdiction were the best indicators that it would complement, not replace, national jurisdiction. He urged States which had not yet signed and ratified the Rome Statute to do so soon in order to send a strong message of deterrence to those who would flout the most elemental laws of mankind, to bring the Statute into force at the earliest possible moment and to convince sceptical States that the Court had a rightful place in the scheme of international justice. Since the Elements of Crimes and the Rules of Procedure and Evidence had been adopted, ICRC urged States which had been waiting for those issues to be resolved to ratify the Statute without delay.

46. ICRC also urged States to avail themselves of its advisory services in the area of international humanitarian law and of its technical assistance in facilitating the national process of ratification and implementation of the Rome Statute.

47. ICRC hoped that the continuing work of the Preparatory Commission would not dilute the integrity of the Statute, particularly with regard to the Court's jurisdiction. In that respect, he noted that the State in whose territory a crime was committed had the authority to prosecute nationals of another State without the need for the latter's consent; there should also be no doubt as to a State's right to delegate that authority to an international tribunal. Furthermore, war crimes, crimes against humanity and genocide were already subject to universal jurisdiction under international customary law; thus, any State could prosecute those responsible for such crimes, regardless of where they were committed. The Geneva Conventions even imposed on States the obligation to either try or extradite those accused of certain war crimes.

The meeting rose at 12.05 p.m.